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Appeal File Numbers:	025-STU-002
Application Number:	2024-S-038
Appeal Against:	Subdivision Authority of Sturgeon County
Appellant:	Henri and Annette Hebert
Date and Location of Hearing:	January 21, 2025 Council Chambers and Through Electronic Communications
Date of Decision:	February 4, 2025
SDAB Members:	Julius Buski (Chair), Lee Danchuk, Nicole Mackoway, Amanda Papadopoulos and Kristin Toms

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#### **NOTICE OF DECISION**

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**IN THE MATTER OF** an appeal by Henri and Annette Hebert against the Subdivision Authority's refusal to subdivide a 2.43-hectare parcel from 62.13 hectares at SW-5-56-24-W4, 56001 Range Road 245 within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the "SDAB" or "Board") on an appeal filed with the SDAB pursuant to section 678(1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA" or "Act").
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act*, Sturgeon County's Land Use Bylaw 1385/17 (the "Land Use Bylaw" or "LUB"), Sturgeon County's Municipal Development Plan (MDP), the Sturgeon Valley South Area Structure Plan, and any amendments thereto.
- [3] The following documents were received and form part of the record:
  - a. The Notice of Appeal;
  - b. A copy of the subdivision application with attachments;
  - c. The Subdivision Authority's written decision; and
  - d. Planning & Development Services Report

#### **PRELIMINARY MATTERS**

- [4] There were no preliminary matters addressed at the hearing.

#### **PROCEDURAL MATTERS**

- [5] The appeal was filed on time and in accordance with section 678(2) of the MGA.

[6] There were no objections to the proposed hearing process as outlined by the Presiding Officer.

[7] There were no objections to the composition of the Board hearing the appeal.

[8] The Board is satisfied that it has jurisdiction to deal with this matter.

## **ISSUES**

[9] The Appellants raised the following grounds of appeal:

- The Appellants are aging and experiencing health issues.
- The Appellants wish to gift the proposed subdivided parcel to their son and retain family ownership of the property.

## **RECOMMENDATION OF THE SUBDIVISION AUTHORITY**

[10] Jonathan Heemskerk, representative for the Subdivision Authority, provided a presentation which included an issue analysis for the Appellants' proposal, and reasons for the Subdivision Authority's refusal of the proposed subdivision.

1. The property is located north of Highway 642, and just east of the Town of Morinville. The property is approximately 153 acres in size with 2 acreages previously subdivided. There is a farmstead currently in the southwest corner and the application is to separate the farmstead from the remaining farmland and create a 2.43-hectare (6 acre) lot. There is currently a home that was built in 1955, a machine shed, some barns and other buildings on the property.
2. The application would create a third acreage parcel resulting in one AG – Major parcel and three AG – Residential (acreage) parcels on the quarter section.
3. Given the proposed configuration, this application is inconsistent with the Municipal Development Plan's (MDP) Residential Type 4 policy 2.3.16 which outlines a maximum of two (2) acreages for every quarter section and it is also inconsistent with the Land Use Bylaw's AG - Agriculture regulations 11.1.3(a).

2.3.16: Shall ensure that the maximum allowable agricultural subdivision layout for a 64 hectares (160 acre) land unit contains two (2) Agricultural Parcels and two (2) Acreage Lots, as further defined within the Land Use Bylaw. Where a proposed development exceeds the above subdivision density, the applicant must submit an application for a plan amendment and redistricting for consideration by Council.

11.1.3(a): Unless otherwise indicated within a planning document, a quarter section in the AG district of 64.7 hectares (160 acres) shall contain a maximum combined density of four parcels, comprised of:

- (i) two AG – Major parcels of approximately 32.4 hectares (80acres) each or alternative sizes necessary due to land fragmentation; and
- (ii) two AG – Residential parcels one of which may be subdivided from each AG – Major parcel having a minimum size of 32.4 hectares (80acres) in accordance with Paragraph 11.1.3(e) of this Bylaw.

4. Part 654(1) of the *Municipal Government Act* requires that a subdivision authority must not approve an application for subdivision approval unless:

(b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided.

5. As this application is inconsistent with a Sturgeon County statutory plan (the MDP) and the Land Use Bylaw, the application was refused.

#### **SUMMARY OF APPELLANT'S POSITION**

[11] The Appellants, Henri and Annette Hebert attended the hearing and submitted that:

1. They are aging and have health issues. Due to these issues, they are no longer able to farm the land.
2. They would like to keep the land in the family and would like the land to be given to their children.

#### **DECISION OF THE BOARD**

[12] **The Board DENIES the appeal and UPHOLDS the decision of the Subdivision Authority made on December 20, 2024 to REFUSE subdivision application 2024-S-038.**

#### **REASONS FOR THE DECISION**

[13] The application seeks to subdivide a 2.43-hectare parcel from 62.13 hectares. The parcel is considered AG – Major as defined in the Agriculture District of the Land Use Bylaw.

[14] The Subdivision Authority submitted that, pursuant to section 654(1) of the *Municipal Government Act* (MGA), a subdivision authority must not approve an application for subdivision approval unless the land that is proposed to be subdivided conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided.

[15] Given the proposed configuration, this application is not consistent with the Municipal Development Plan's Residential Type 4 policies and with the Land Use Bylaw's AG – Agriculture.

[16] While the configuration aligns with the maximum density requirements outlined in the Municipal Development Plan (MDP) and Land Use Bylaw (LUB), it does not align with the following policies and regulations:

MDP Policy 2.3.16 which notes a maximum of two acreage lots for every 64 hectares (quarter section):

"Shall ensure that the maximum allowable agricultural subdivision layout for a 64 hectares (160 ac) land unit contains two (2) Agricultural Parcels and two (2) Acreage Lots, as further defined within the Land Use Bylaw. Where a proposed development exceeds the above subdivision density, the applicant must submit an application for a plan amendment and redistricting for consideration by Council."

- [17] The Subdivision Authority submitted that the proposal does not align with the subdivision regulations in the Land Use Bylaw, specifically Policy 11.1.3(3) which states that unless otherwise indicated within a planning document, a quarter section in the AG district of 64.7 hectares (160 acres) shall contain a maximum combined density of four parcels, comprised of:
- (i) two AG – Major parcels of approximately 32.4 hectares (80 acres) each or alternative sizes necessary due to land fragmentation; and
  - (ii) two AG – Residential parcels (one of which may be subdivided from each AG – Major parcel having a minimum size of 32.4 hectares (80 acres)).
- [18] The Board finds that although the Appellants submitted that they would retain ownership of both the proposed lot and the remnant lot, and it will remain the family farm, the Board must make decisions based on use, and not the user, and therefore approval of the subdivision must contemplate a scenario where the subject parcel changes ownership in the future. It is incumbent on the Board to consider future landowners, thus avoiding potential future land use conflicts.
- [19] The Board finds that the application is inconsistent with the cited sections of the Municipal Development Plan and the Land Use Bylaw and the Board must comply with the statutory plan (MDP).
- [20] The Board finds that it would be inappropriate to approve a subdivision application inconsistent with the Land Use Bylaw and the Municipal Development Plan, which would detract from Council's vision of preventing the fragmentation of farmland and orderly residential development in the County.
- [21] For all of these reasons, the Board denies the appeal and upholds the decision of the Subdivision Authority to refuse the subdivision application.

Dated at the Town of Morinville, in the Province of Alberta, this 4<sup>th</sup> day of February, 2025.



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Julius Buski, Chair

*Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.*



**APPENDIX "A"**  
**List of Submissions**

- The Notice of Appeal;
- A copy of the subdivision application with attachments;
- The Subdivision Authority's written decision; and
- Planning & Development Services Report
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